SUPREME COURT, U. S.
FILED
FEB 10 1975
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-995

VINCENT ANTHONY CIRAOLO,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

GERALD L. SHARGEL
Counsel for Petitioner
522 Fifth Avenue
New York, New York 10036
687-4100

LA ROSSA, SHARGEL & FISCHETTI
of Counsel

Dated: February 14, 1975

INDEX

	PAGE
Judgment Below	1
Jurisdiction	2
Questions Presented	2
Constitutional Provision Involved	2
Statutes Involved	3
Statement of the Case	4
Reasons for Granting the Writ	6
Conclusion	8
Appendix:	
Judgment of the United States Court of Appeals	A-1

Authorities Cited

Cicenia v. La Gay, 357 U.S. 504 (1958)	7
Cochran v. Kansas, 316 U.S. 255 (1942)	7
Commonwealth v. Claudy, 350 U.S. 116 (1956)	7
Crooker v. California, 357 U.S. 433 (1958)	7
De Meerleer v. Michigan, 329 U.S. 633 (1947)	7
Moore v. Michigan, 355 U.S. 155 (1957)	7
Williams v. Kaiser, 323 U.S. 471 (1945)	7
United States v. Curry, 471 F.2d 419 (5th Cir., 1973)	4
United States v. Hayman, 342 U.S. 205 (1952)	7
United States v. Rodriguez, 498 F.2d 309-10 (5th Cir., 1974)	7

IN THE

Supreme Court of the United States

October Term, 1974

No.

VINCENT ANTHONY CIRAOLO,

Petitioner,

against

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, Vincent Anthony Ciraolo, prays that a Writ of Certiorari issue to review the judgment entered on January 16, 1975 by the United States Court of Appeals for the Fifth Circuit in the proceeding entitled *Vincent Anthony Ciraolo,* Petitioner-Appellant, v. *United States of America,* Respondent-Appellee, Docket No. 74-1327.

Judgment Below

The Court of Appeals for the Fifth Circuit wrote no opinion. Its judgment appears at Appendix page A-1.

Jurisdiction

The judgment of the Court of Appeals was entered on January 16, 1975. The jurisdiction of this Court is invoked under Title 18, United States Code, Section 1254(1).

Questions Presented

1. Whether Petitioner's representation at trial and on direct appeal by an attorney who was concededly suffering "mental stress" throughout the time he represented Petitioner and who failed to make any objection at all, either at trial or on direct appeal, to the introduction against Petitioner of extremely prejudicial, obviously unlawful evidence, constituted a denial of the effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution?

2. Whether Petitioner was improperly denied a hearing on contested issues of fact in the Motion which he brought under Title 28, United States Code, Section 2255 to vacate his conviction and sentence on grounds of deprivation of Sixth Amendment rights?

Constitutional Provision Involved

United States Constitution, Amendment VI, states as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accu-

sation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Statutes Involved

Title 28, United States Code, Section 2255 states in pertinent part as follows:

> "Unless the motion and the files and records of the case conclusively show that a prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States Attorney, grant a prompt hearing thereon, determine the issues and findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.
>
> A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.
>
> The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.
>
> An appeal may be taken to the court of appeals from the order entered on the motion as from a

final judgment on application for a writ of habeas corpus.

An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention."

Statement of the Case

Petitioner, Vincent Anthony Ciraolo, was convicted by a jury on April 16, 1972 in the United States District Court for the Southern District of Florida on a charge of conspiracy to distribute and unlawful distribution of counterfeit currency, in violation of Title 18, United States Code, Sections 371, 472, 473 and 2. On that date, Petitioner was sentenced to a term of sixteen years in prison.

On January 9, 1973, Petitioner Ciraolo's conviction was affirmed on direct appeal, see *United States* v. *Curry, et al.*, 471 F.2d 419 (5th Cir., 1973), and on May 7, 1973, this Court denied Petitioner's petition for a Writ of Certiorari.

On March 12, 1974, Petitioner moved pursuant to Title 28, United States Code, Section 2255 to vacate his conviction and sentence on the ground that he had not had the effective assistance of counsel at trial. On May 14, 1974, the District Court for the Southern District of Florida denied the relief sought without an evidentiary hearing.

(A 14)* On January 16, 1975, the Court of Appeals for the Fifth Circuit upheld the District Court's decision.

Petitioner's Section 2255 Motion in the District Court was based upon some extraordinary, highly prejudicial conduct by his own attorney at the trial, coupled with a post-trial affidavit provided by his trial counsel in which the attorney, who is now a sitting judge, stated that while he was representing Petitioner, he

> ". . . was undergoing mental stress brought about by a pending dissolution of marriage and the loss of [his] children."

The attorney went on to concede that:

> "The representation that I gave on behalf of [Petitioner] may not have been of the calibre of my usual practice, due to this mental stress." (A 7)

The extreme consequences of the attorney's impaired condition are evident on examination of the trial record. With the exception of the testimony of a single accomplice, the only evidence linking Petitioner to the counterfeit currency scheme was the testimony of a Secret Service agent who arrested Petitioner and then seized from his person a slip of paper bearing the name and address of a place to which the Government proved that counterfeit money was to be delivered.

At a suppression hearing brought on not by Petitioner's attorney, but by co-defendants, held the morning trial began, it developed that the *only* information about Petitioner which formed the basis for his arrest and incidental search

---

* References to "A" and "T" are to Petitioner's Appendix filed with the Court of Appeals for the Fifth Circuit and to the trial transcript, likewise filed respectively.

was the same agent's observation of a thirty-second conversation, on its face utterly innocent, between Petitioner and a known participant in the counterfeiting scheme, which took place on a street a few minutes prior to the nearby arrest of Petitioner's co-defendants and seizure from them of counterfeit currency. (T 81-99)*

With no argument whatsoever to the contrary from Petitioner's attorney, the Trial Court ruled that Petitioner's arrest, and hence the seizure of the slip of paper from him, was lawful. (T 161) Later at the trial, when the slip of paper was offered into evidence, Petitioner's attorney made no objection whatsoever, but then, weirdly, devoted his entire cross-examination of the agent to questions relating to the basis for the arrest! (T 391-399) Finally, when Petitioner was convicted and appealed his conviction to the Fifth Circuit Court of Appeals, Petitioner's same attorney did not even raise any issue of illegal arrest and search.

Reasons for Granting the Writ

The facts outlined above demonstrate that Petitioner was, in practical effect, *without any counsel whatsoever* in responding to the introduction against him of plainly

---

* After this conversation, at a time when Secret Service agents entered the building where the counterfeit money was seized, Petitioner was seen by the arresting agent to "walk hurriedly" toward a phone booth in what the agent described as a "nonchalant trot." (T 94-95) However, there was obviously nothing sinister in this since the agent testified that it was the *conversation* between Petitioner and the known counterfeit dealer which caused the agent to "assume" that he had probable cause to arrest the Petitioner. (T 90) The bald error of the agent's arrest and search of the Petitioner is most dramatically shown by the agent's testimony that he would have arrested *anyone* whom the accomplice had been seen talking to on the street near the building where the counterfeit money was later found. (T 396)

unlawful evidence in a case in which that evidence was obviously critical to the Government's case. We urge that this Court review this case simply because the Court of Appeals' offhanded rejection of Petitioner's Sixth Amendment claim constituted an utterly erroneous and, in this case, obviously prejudicial deprivation of a major constitutional right. See, e.g., *Moore* v. *Michigan*, 355 U.S. 155 (1957); *De Meerleer* v. *Michigan*, 329 U.S. 663 (1947); *Williams* v. *Kaiser*, 323 U.S. 471 (1945); *Crooker* v. *California*, 357 U.S. 433 (1958); *Cicenia* v. *La Gay*, 357 U.S. 504 (1958).

Alternatively, the District Court committed obvious error in not at the least affording Petitioner the right to a hearing. Section 2255 of Title 18 provides that a prisoner is entitled to a "prompt hearing" on his Motion unless the files and records "*conclusively* show that the prisoner is entitled to no relief." (Emphasis added) In this case, the record itself showed the opposite. The only conceivable response to Petitioner's claim was that his attorney might have failed to object to the evidence out of some misguided tactical judgment; see, e.g., *United States* v. *Rodriguez*, 498 F.2d 309-10 (5th Cir., 1947). However unlikely an explanation that might be for such egregious conduct, Petitioner was, at a minimum, entitled to examine the attorney under oath at a hearing to demonstrate conclusively that his fatal inaction had resulted from his strained mental condition and not from tactical error. See, *Commonwealth* v. *Claudy*, 350 U.S. 116 (1956); *United States* v. *Hayman*, 342 U.S. 205 (1952). Compare, e.g., *Cochran* v. *Kansas*, 316 U.S. 255 (1942).

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Fifth Circuit Court of Appeals.

Dated: February 14, 1975

Respectfully submitted,

GERALD L. SHARGEL
Attorney for Petitioner
Vincent Anthony Ciraolo

LA ROSSA, SHARGEL & FISCHETTI
of Counsel

Judgment of the United States Court of Appeals

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 74-2613

SUMMARY CALENDAR *

—o—

VINCENT ANTHONY CIRAOLO,
Petitioner-Appellant,

vs.

UNITED STATES OF AMERICA,
Respondent-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

—o—

[January 16, 1975]

Before:

COLEMAN, DYER, and RONEY, *Circuit Judges.*

PER CURIAM:

AFFIRMED. See Local Rule 21.[1]

---

* Rule 18, 5 Cir., see Isbell Enterprises, Inc. v. Citizens Casualty Company of New York, et al., 5 Cir., 1970, 431 F.2d 409, Part I.

[1] See NLRB v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 430 F.2d 966.